

Application No. 10/516,798
Paper Dated April 17, 2006
In Reply to USPTO Correspondence of March 20, 2006
Attorney Docket No. 3985-045797

REMARKS

In the Office Action, the claims have been restricted between the following allegedly distinct species:

- Species I: Recited in claim 14 and as shown in Figures 1-4; and
Species II: Recited in claim 15 and as shown in Figure 5.

The Action further indicates that claim 11 is generic to both of the above-referenced species. Since the Examiner has not indicated to which species claims 12, 13, 16 and 17 belong, Applicants hereby assume that these claims are also generic to both of the above-referenced species.

Applicant respectfully traverses this Restriction Requirement. The present application is generally directed to an orthopedic device. The claims are directed to such an orthopedic device for the purpose of supporting at least one part of a human limb with a pivotable joint. The Examiner contends that the inventions do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. Specifically, the Examiner contends the two species presented above are mutually exclusive because claim 14 recites the limitations disclosed for the first species but not for the second species, while claim 15 recites the limitations disclosed only for the second species and not the first.

The Applicant respectfully disagrees. Unity of invention requires that the claims all include technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art (PCT Rule 13.2, 37 C.F.R. § 1.475(a)). It is apparent that all of the claims include at least the special technical features of an orthopedic device for supporting at least one part of a human limb as mentioned above.

Also, the two species presented above are not mutually exclusive. Claim 15 depends from, and includes all of the limitations of, claim 14. Therefore, if claim 14 recites the limitations disclosed for the first species as discussed by the Examiner on page 3 of the Office Action, then claim 15 also recites all of the limitations disclosed for the first species.

Moreover, since all of the claims include common subject matter relating to an orthopedic device, searches directed to the claims of either Species would clearly overlap each other. Such co-extensive searching would not present any undue burden on the Examiner for examination of the claims. Furthermore, the Examiner handling the

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international application (PCT/NL03/00414) believed unity of invention to exist and conducted a search on a similar set of claims. Accordingly, restriction of the claims between the allegedly distinct inventions embodied by these two species is inappropriate.

In view of the above remarks, withdrawal of the restriction requirement and examination of claims 11-17 on the merits are respectfully requested.

However, in the event the Examiner maintains the Restriction Requirement, Applicants hereby elect, with traverse, to prosecute the invention of Species I, which includes claims 1-14, 16 and 17. Applicants make this election without prejudice to the later filing of a divisional application directed to the non-elected inventions. Further, claim 15 is indirectly dependent upon independent claim 11. Therefore, in the event claim 11 is deemed to be allowable, then claim 15 should be reinstated as part of the present application.

Respectfully submitted,

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